

**Thames Valley Steel Corporation and Shopmen's
Local Union No. 832, International Association
of Bridge, Structural and Ornamental Iron
Workers, AFL-CIO. Case 34-CA-4783**

November 22, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on June 15, 1990,¹ the General Counsel of the National Labor Relations Board issued a complaint on August 17, 1990, against Thames Valley Steel Corporation, the Respondent, alleging that it has violated Sections 8(a)(5) and (1) and 8(d) of the National Labor Relations Act. On April 25, 1991, the Respondent filed an amended answer to the complaint.² Thereafter, on July 26, 1991, the General Counsel issued an amended complaint. Although properly served copies of the amended complaint, the Respondent has failed to file an answer.

On August 30, 1991, the General Counsel filed a Motion for Summary Judgment. On September 4, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The General Counsel moves for summary judgment on the pleadings and supporting documents under Section 102.24 and 102.50 of the Board's Rules and Regulations. We find that summary judgment is appropriate. The Respondent filed an amended answer to the original complaint and notice of hearing issued on August 17, 1990, the substantive parts of which are, in relevant part, the same as those contained in the amended complaint.³ Thus the Respondent's answer to the original complaint satisfies its obligation under Section 102.20 to file a timely answer to the amended complaint.⁴ *Marko Contractors*, 269 NLRB 990 (1984).

¹ The Union filed an amended charge on July 26, 1990.

² The General Counsel makes no reference to an initial answer by the Respondent.

³ The difference between the original and the amended complaint is that, in the amended complaint, the allegation of the refusal-to-process grievances is a separate independent allegation with no reference to Sec. 8(d).

⁴ By telephone on August 21, 1991, the Respondent informed the Region that it would not respond to the allegations set forth in the amended complaint.

In its answer the Respondent admits the factual allegations of the complaint, i.e., that it failed to make payments on behalf of employees to the National Shopmen Pension Fund, that it failed to remit union dues collected from employees, that it terminated medical benefits for employees, and that it refused to process grievances. Moreover, the Respondent does not specifically deny the allegation in the complaint that its actions constitute a failure to bargain collectively and in good faith with the Union in violation of the Act except insofar as it contends that its actions were a result of its economic circumstances. It has been established, however, that economic necessity is not cognizable as a defense to an allegation of an unlawful refusal to bargain. *Auburn Die Co.*, 282 NLRB 1044 (1987); *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973).

Section 102.20 of the Board's Rules and Regulation provides that "any allegation in the complaint not specifically denied or explained . . . shall be deemed to be admitted to be true." Thus, the Respondent having admitted the factual allegations of the complaint and having, in effect, failed to deny that its actions constitute unfair labor practices, we shall grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation with an office and place of business in New London, Connecticut, has been engaged in the manufacture of fabricated steel. During the 12-month period ending on June 15, 1990, the Respondent, in the course of its business operations, purchased and received at its facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about January 18, 1970, the Union, by virtue of Section 9(a), has been the exclusive collective-bargaining representative for the employees in the following appropriate unit:

All production and maintenance employees employed by Respondent at its New London facility, excluding office employees, draftsmen,

engineering employees, watchmen, guards and supervisors as defined in the Act.

The Respondent's recognition of the Union as the exclusive collective-bargaining representative has been embodied in successive collective-bargaining agreements, the most recent of which (the Agreement) is effective from January 18, 1989, through January 17, 1992.

The Respondent unilaterally and without the consent of the Union has failed to adhere to certain terms of the Agreement in the following manner. Since about February 15, 1990, the Respondent has failed to make payments on behalf of employees to the National Shopmen Pension Fund. Since about May 20, 1990, Respondent has failed to remit to the Union dues collected from employees. Since about May 15, 1990, the Respondent terminated medical benefits for employees. Further, since about June 18, 1990, the Respondent has refused to process grievances pursuant to the Agreement.

The terms of the Agreement which the Respondent unilaterally and without the consent of the Union has failed to continue in effect, as described above, relate to wages, hours, and terms and conditions of employment of unit employees, and are mandatory subjects of bargaining. The Respondent engaged in such conduct without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such conduct. We find that the Respondent's conduct constitutes an unlawful mid-term modification of the Agreement within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By failing since about February 15, 1990, to make payments on behalf of employees to the National Shopmen Pension Fund, by failing since about May 20, 1990, to remit to the Union dues collected from employees, by terminating medical benefits for employees since about May 15, 1990, and by refusing to process grievances pursuant to the Agreement since about June 18, 1990, the Respondent has refused to bargain collectively and in good faith with the Union and thereby has engaged in unfair labor practices affecting commerce within the meaning of Sections 8 (a)(5) and (1) and 8(d) and Section 2(6) and (7) of the Act.⁵

⁵ As noted above in connection with the refusal-to-process grievances allegation, the amended complaint deletes language relating to Sec. 8(d), and we find that this refusal violated Sec. 8(a)(5) and (1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully modified the Agreement effective from January 18, 1989, through January 17, 1992, we shall order the Respondent to implement and adhere to the provisions of the Agreement with which it failed to comply.

We shall order that the Respondent make whole the unit employees by transmitting the required payments to the National Shopmen Pension Fund. Additional amounts shall be paid into the fund as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). We shall further order that the Respondent restore the medical benefits it terminated on about May 15, 1990, and make whole the unit employees for any medical expenses incurred as a result of the Respondent's failure to implement the terms of the Agreement. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980). We shall also order that the Respondent remit to the Union all the dues owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the Agreement. All payments to the Union and the employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, we shall order that the Respondent process grievances as is provided in the Agreement, including all the grievances that should have been processed since about June 18, 1990, the date on which the Respondent began its unlawful course of refusing to process grievances.

ORDER

The National Labor Relations Board orders that the Respondent, Thames Valley Steel Corp., New London, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to adhere to its collective-bargaining agreement with Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, by unilaterally failing to make the appropriate payments to the National Shopmen Pension Fund, unilaterally failing to remit to the Union all union dues properly deducted from unit employees' pay, unilaterally terminating medical benefits for employees, and by refusing to process grievances, without prior notice

to the Union or affording the Union an opportunity to bargain about such conduct.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by and adhere to its collective-bargaining agreement with the Union by making the appropriate payments to the National Shopmen Pension Fund, remitting to the Union all union dues properly deducted from employees' pay, restoring the medical benefits that were unilaterally terminated by the Respondent, and, on request, by processing the grievances in the manner prescribed in the collective-bargaining agreement.

(b) Make unit employees whole for any losses they may have suffered as a result of the Respondent's failure to abide by the collective-bargaining agreement, as prescribed in the remedy section of the Decision and Order.

(c) Post at its facility in New London, Connecticut, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to adhere to the collective-bargaining agreement with Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO by unilaterally failing to make the appropriate payments to the National Shopmen Pension Fund, unilaterally failing to remit to the Union all union dues properly deducted from unit employees' pay, unilaterally terminating medical benefits for employees, and refusing to process grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by and adhere to the collective-bargaining agreement with the Union by making the appropriate payments to the National Shopmen Union Fund, remitting to the Union all union dues properly deducted from unit employees' pay, restoring the medical benefits that we unilaterally terminated, and, on request, by processing the grievances in the manner prescribed in the collective-bargaining agreement.

WE WILL make unit employees whole for any losses they may have suffered as a result of the Respondent's failure to abide by the collective-bargaining agreement. The appropriate bargaining unit is:

All production and maintenance employees employed by Respondent at its New London facility, excluding office employees, draftsmen, engineering employees, watchmen, guards and supervisors as defined in the Act.

THAMES VALLEY STEEL CORPORATION